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March 2, 2016

United States District Court  
Eastern District of Pennsylvania  
Office of the Clerk of Court  
601 Market Street, Room 2609  
Philadelphia, PA 19106-1797

Dear Clerk:

Enclosed please find:

1. The original and a copy of the Complaint in the Moore v. Total Card, Inc matter for filing;
2. Civil Cover Sheet;
3. Summons;
4. Designation Form;
5. Case Management Track Designation Form;
6. CD with digital copies of all documents in PDF format;
7. Self-addressed stamped envelope; and
8. Check for \$400 payable to U.S. District Court, Eastern District of Pennsylvania.

Please initiate the action and return a copy of the complaint and the original summons to me in the enclosed envelope. Please call me if you have any questions.

Sincerely,

Lizsandra Pena  
Paralegal

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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Charles Moore,	:	
	:	Civil Action No.: _____
	:	
Plaintiff,	:	
v.	:	
	:	
Total Card, Inc.; and DOES 1-10, inclusive,	:	<b>COMPLAINT</b>
	:	
Defendants.	:	
	:	
	:	

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For this Complaint, the Plaintiff, Charles Moore, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the "TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1331, in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

3. The Plaintiff, Charles Moore ("Plaintiff"), is an adult individual residing in Philadelphia, Pennsylvania, and is a "person" as defined by 47 U.S.C. § 153(39).

4. The Defendant, Total Card, Inc. ("Total"), is a South Dakota business entity with an address of 5109 S Broadband Lane, Sioux Falls, South Dakota 57108-2208, and is a "person" as defined by 47 U.S.C. § 153(39).

5. Does 1-10 (the “Agents”) are individual employees and/or agents employed by Total and whose identities are currently unknown to the Plaintiff. One or more of the Agents may be joined as parties once their identities are disclosed through discovery.

6. Total at all times acted by and through one or more of the Agents.

### **FACTS**

7. Within the last year, Total called Plaintiff’s cellular telephone, number 267-xxx-9117, in an attempt to collect a consumer debt allegedly owed by Plaintiff.

8. At all times mentioned herein, Total contacted Plaintiff using an automated telephone dialer system (“ATDS” or “predictive dialer”) and/or by using an artificial or prerecorded voice.

9. When Plaintiff answered the calls from Total, he heard a prerecorded message instructing Plaintiff to hold for the next available representative.

10. During a live conversation on or around August 26, 2015, Plaintiff demanded that all calls to him cease immediately.

11. Nonetheless, Total continued calling Plaintiff using a prerecorded voice.

12. The calls caused Plaintiff a great deal of frustration and intruded on his right to be free from unwanted invasions. Plaintiff was ultimately forced to retain the assistance of counsel in an effort to stop the calls.

### **COUNT I**

#### **VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, ET SEQ.**

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. At all times mentioned herein and within the last four years, Defendants called Plaintiff on his cellular telephone using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.

15. Defendants continued to place automated calls to Plaintiff's cellular telephone after being directed by Plaintiff to cease calling and knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

16. The telephone number called by Defendants was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

17. The calls from Defendants to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18. Each of the aforementioned calls made by Defendants constitutes a violation of the TCPA.

19. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays that judgment be entered against Defendants:

A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);

- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);
- C. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: March 2<sup>nd</sup>, 2016

Respectfully submitted,

By /s/ JBB8445

Jody B. Burton, Esq.  
Bar No.: 71681  
LEMBERG LAW, L.L.C.  
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Wilton, CT 06897  
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Attorneys for Plaintiff

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1112 South 56th St., Philadelphia, PA 19143

Address of Defendant: 5109 S Broadband Lane, Sioux Falls, South Dakota 57108-2208

Place of Accident, Incident or Transaction: County of Philadelphia

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No

Does this case involve multidistrict litigation possibilities?

Yes  No

*RELATED CASE, IF ANY:*

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No

**CIVIL: (Place ✓ in ONE CATEGORY ONLY)**

A. *Federal Question Cases:*

1.  Indemnity Contract, Marine Contract, and All Other Contracts

B. *Diversity Jurisdiction Cases:*

1.  Insurance Contract and Other Contracts

2.  FELA

2.  Airplane Personal Injury

3.  Jones Act-Personal Injury

3.  Assault, Defamation

4.  Antitrust

4.  Marine Personal Injury

5.  Patent

5.  Motor Vehicle Personal Injury

6.  Labor-Management Relations

6.  Other Personal Injury (Please

7.  Civil Rights

specify)

8.  Habeas Corpus

7.  Products Liability

9.  Securities Act(s) Cases

8.  Products Liability — Asbestos

10.  Social Security Review Cases

9.  All other Diversity Cases

(Please specify)

11.  All other Federal Question Cases   Consumer Credit

(Please specify)

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, Jody Burton, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 3/2/2016

/s/JBB8445

Attorney-at-Law

Bar No. 71681

Attorney ID.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.**

DATE: 3/2/2016

/s/JBB8445

Attorney-at-Law

Bar No.: 71681

Attorney ID.#